
OPINION OF THE PUBLIC ACCESS COUNSELOR

KRISTOPHER H. BILBREY,
Complainant,

v.

CITY OF WINCHESTER,
Respondent.

Formal Complaint No.
18-FC-31

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the City of Winchester (“City”) violated the Open Door Law¹ (“ODL”). The City responded to the complaint through attorney Meeks Cockerill. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 15, 2018.

¹ Ind. Code §§ 5-14-1.5-1 to -8

BACKGROUND

The City of Winchester’s (“City”) common council established a Building Oversight Committee (“BOC”) to oversee the rehabilitation of a portion of church property the City is renovating as part of a larger project between Winchester and the Volunteers of America of Indiana (“VOAIN”) to open a new inpatient drug rehabilitation facility—*The Winchester House*— for mothers and expectant mothers with substance abuse disorders to receive treatment. The BOC consists of three members: two appointed by the council and one by the Mayor. The council authorized the BOC to focus on expenditures, provide fiscal oversight, and advise on the issue of best practices in the construction of the facility.

On January 15, 2018, the City Council made its appointments to the committee. Three days later, two members of the BOC toured and inspected the building for the purpose of inspecting the job site.

Kristopher H. Bilbrey (“Complainant”) filed a formal complaint alleging the City—through the BOC— violated the Open Door Law (“ODL”). Bilbrey appears to argue that when the two committee members toured the project site on January 18, 2018, the gathering constituted a meeting that should have been properly noticed and open to the public.

ANALYSIS

1. The Open Door Law (“ODL”)

It is the intent of the Open Door Law (“ODL”) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-

1. Accordingly, except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

The parties do not dispute that the City of Winchester (“City”) is a public agency for purposes of the ODL; and thus, subject to the law’s requirements. Ind. Code § 5-14-1.5-2. In addition, the parties do not dispute that the City Council (“Council”) and Building Oversight Committee (“BOC”) are both considered a governing body of the City for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). Thus, unless an exception applies, all meetings of the BOC must be open at all times to allow members of the public to observe and record.

1.1 Meetings of the Governing Body

Generally, under the ODL, every meeting of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. Ind. Code § 5-14-1.5-3. Under the ODL, a *meeting* is:

[A] gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.

Ind. Code § 5-14-1.5-2(c). The BOC has three members, so, typically a gathering of two of the members for the purpose of taking official action upon public business will trigger the requirements under the ODL. More on the *official action* and *public business* requirements in moment. But first, it is notable that

the ODL's definition of *meeting* does not include, in relevant part, the following:

- (2) Any on-site inspection of any:
 - (A) project;
 - (B) program; or
 - (C) facilities of applicants for incentives or assistance from the governing body.

In short, if the purpose of the gathering is an on-site inspection of any of those items, it is not a meeting under the ODL. As a result, the notice and openness requirements are not triggered.

Here, Bilbrey contends that BOC violated the ODL when two of its members—indeed a majority of the governing body—gathered for an on-site inspection of a City project. The City argues this did not constitute a meeting under the ODL because the gathering was—by definition—not a meeting.

Based on the evidence submitted to this Office, the City's argument is more persuasive. Mr. Bilbrey should be mindful that in order for the requirements of the ODL to be triggered, there must be:

- 1) Meeting; and
- 2) Governing Body of a Public Agency.

Without both of these elements, the ODL is not triggered. The legislature statutorily defined *meeting* and that definition expressly excludes eight specific instances. One such exclusion is an on-site inspection of a project.

Because there appears to have been no meeting under the ODL, a discussion about what the terms *official action* and *public business* mean are better suited for a different day.

Notably, the City readily acknowledges that the BOC is subject to the ODL. Even so, the City claims the Council has since rescinded the resolution that created the BOC; and thus, Winchester no longer has a BOC. Regardless, the City had a BOC at the time Bilbrey filed this complaint.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of Winchester's Building Oversight Committee did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the printed name.

Luke H. Britt
Public Access Counselor